

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

LYDIA GARCIA,

Plaintiff,

v.

PORTFOLIO RECOVERY ASSOCIATES,
LLC,

Defendant.

§ No.

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PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LYDIA GARCIA (Plaintiff), through her attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, PORTFOLIO RECOVERY ASSOCIATES, LLC (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq* (FDCPA).
2. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."

4. Defendant conducts business in the state of Texas, and therefore, personal jurisdiction is established.
5. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.

PARTIES

6. Plaintiff is a natural person residing in Harlingen, Cameron County, Texas.
7. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)*.
8. Defendant is an alleged debt collector as that term is defined by *15 U.S.C. 1692a(6)*, and sought to collect a consumer debt from Plaintiff.
9. Defendant is a collection agency with a business office in Norfolk, Virginia.
10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor, Bank of America, with an account number ending in 5370 / 7106.
12. Plaintiff's alleged debt owed to Bank of America arises from transactions for personal, family, and household purposes.
13. On September 15, 2008, Plaintiff's counsel faxed a cease and desist and a notice of representation letter to Defendant (Plaintiff's counsel's letter to Defendant and fax confirmation are attached as Group Exhibit A).
14. Despite receiving Plaintiff's counsel's letter (Exhibit A), Defendant communicated with Plaintiff after September 15, 2008, in an attempt to collect a debt (Defendant's letter to

Plaintiff dated February 2, 2011, is attached as Exhibit B).

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

15. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
- b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.

WHEREFORE, Plaintiff, LYDIA GARCIA, respectfully requests judgment be entered against Defendant, PORTFOLIO RECOVERY ASSOCIATES, LLC, for the following:

16. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
17. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*
18. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, LYDIA GARCIA, demands a jury trial in this case.

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RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: /s/ Michael S. Agruss

Michael S. Agruss (CA SBN: 259567)

Krohn & Moss, Ltd.

10474 Santa Monica Blvd., Suite 401

Los Angeles, CA 90025

Tel: 323-988-2400 x235

Fax: 866-583-3695

magruss@consumerlawcenter.com

Attorneys for Plaintiff

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF TEXAS

Plaintiff, LYDIA GARCIA, states the following:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, LYDIA GARCIA, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

3-3-11
Date

Lydia Garcia
LYDIA GARCIA

EXHIBIT A

Debt Counsel for Seniors & the Disabled



15 September 2008

BY FAX ONLY: 757-321-2519

Page 1 of 2

Collections Manager
Portfolio Recovery Associates, LLC
120 Corporate Blvd
Norfolk, VA 23502

Re: **Amando Uresti & Lydia Uresti**
Your file or reference No.: ~~5370/Bank Of America~~
Our file No.: 10279

Dear General Counsel or Compliance Officer:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby ~~disputes~~ the above-referenced alleged debt and requests **validation** of it in accordance with **15 U.S.C. § 1692g**. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must **cease** contacting them according to **§§ 1692c(a)(2) AND 1692c(c)** of the **Fair Debt Collection Practices Act**, since this letter not only serves as notice of our representation of this client but also contains a **cease and desist** order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Very truly yours,

Jerome S. Lamet, Supervising Attorney
Debt Counsel for the Seniors and the Disabled
Cc: Amando Uresti & Lydia Uresti

Jerome S. Lamet, Supervising Attorney
The Pontiac Building
542 South Dearborn
Suite 1260
Chicago, Illinois 60605
V: (312) 939-2221
F: (312) 939-2741

TRANSMISSION VERIFICATION REPORT

TIME : 09/15/2008 03:42
NAME : JEROME LAMET LTD
FAX : 13123563199
TEL : 13129392221
SER. # : BROD8J797996

DATE, TIME
FAX NO./NAME
DURATION
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09/15 03:41
17573212519
00:00:27
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OK
STANDARD
EQM

Debt Counsel for Seniors & the Disabled

DCSD

15 September 2008

BY FAX ONLY: 757-321-2519
Page 1 of 2

Collections Manager
Portfolio Recovery Associates, LLC
120 Corporate Blvd
Norfolk, VA 23502

Re: **Amando Uresti & Lydia Uresti**
Your file or reference No.: ~~4000-0000-0000~~ 5370/Bank Of America
Our file No.: 10279

Dear General Counsel or Compliance Officer:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws.

This letter serves as notice that my client hereby disputes the above-referenced alleged debt and requests validation of it in accordance with 15 U.S.C. § 1692g. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must cease contacting them according to §§ 1692c(a)(2) AND 1692c(c) of the Fair Debt Collection Practices Act, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Very truly yours,


EXHIBIT B



Portfolio Recovery Associates, LLC
We're giving debt collection a good name.

FIA Card Services/Bank of America
 FLEET/BANK OF AMERICA
 Account/Reference No : ~~XXXXXXXXXX~~ 7106
 *Balance: \$2 862 15

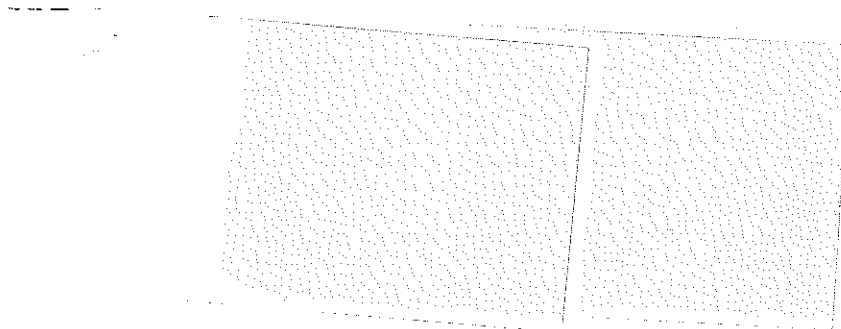
February 2, 2011

Use Your Tax Refund, and Get Yourself Out of Debt!

Start making strides now to resolve your debt. Make a down-payment on your account by **02/28/2011**, and use your refund to pay the rest later ***These savings won't last long, so call us before it's too late.***

Single Payment Settlement Option	6 Month Settlement Plan	12 Month Settlement Plan
<ul style="list-style-type: none"> ● Your Down Payment - \$230.00 ● Your installment payment 	<ul style="list-style-type: none"> ● Your Down Payment - \$165.00 ● 6 monthly installment 	<ul style="list-style-type: none"> ● Your Down Payment - \$130.00 ● 12 monthly installment

↑ TO OPEN THIS SIDE SLIDE FINGER UNDER THIS EDGE ↑



San Benito TX 78586-2842

LYDIA R GARCIA

54M2 479939964

0011020400

ADDRESS SERVICE REQUESTED

CDPRAS01
 PO Box 1022
 Wixom MI 48393-1022



PRESORT
 FIRST CLASS MAIL
 US POSTAGE PAID
 DSI 48393


Portfolio Recovery Associates, LLC
We're giving debt collection a good name.

FIA Card Services/Bank of America

FLEET/BANK OF AMERICA

 Account/Reference No : ~~XXXXXXXXXX~~ 7106

*Balance: \$2 862 15

February 2, 2011

Use Your Tax Refund, and Get Yourself Out of Debt!

Start making strides now to resolve your debt. Make a down-payment on your account by **02/28/2011**, and use your refund to pay the rest later. *These savings won't last long, so call us before it's too late.*




Single Payment Settlement Option	6 Month Settlement Plan	12 Month Settlement Plan
<ul style="list-style-type: none"> • Your Down Payment - \$230.00 • Your installment payment \$2,060.00 • SAVE \$572.15 	<ul style="list-style-type: none"> • Your Down Payment - \$165.00 • 6 monthly installment payments of \$380.00 • SAVE \$417.15 	<ul style="list-style-type: none"> • Your Down Payment - \$130.00 • 12 monthly installment payments of \$205.00 • SAVE \$272.15

Important Dates to Remember

- Your down payment must be received no later than **02/28/2011**.
- Your first installment payment must be received no later than 30 days after the down payment due date.

Also

- Your account will be considered "Settled in Full" after your final payment is posted
- If you satisfy the terms of this settlement offer, no further interest will be charged to you.

 <p>We are ready to help you resolve this debt! Just call: 1-800-772-1413 before 02/28/2011 to discuss the AFFORDABLE PAYMENT OPTIONS that are available to you 730 AM to 11 PM Mon.-Fri. • 8 AM to 5 PM Sat. • 2 PM to 9 PM Sun.</p>	
 <p>Mail all checks and payments to: PORTFOLIO RECOVERY ASSOCIATES LLC P.O. Box 12914 Norfolk VA 23541</p>	 <p>Make your Payment Online! www.portfoliorecovery.com</p>

**We are not obligated to renew this offer. Interest continues to accrue on this account until the account is satisfied unless interest has been suspended. The above balance includes interest as of the date of this letter. You may contact us to obtain an exact payoff amount for a future date*

Company Address: Portfolio Recovery Associates, LLC, 120 Corporate Blvd., Norfolk, VA 23502

Disputes Correspondence Address: 140 Corporate Blvd Norfolk, VA 23502 or E-mail:
PRA_Disputes@portfoliorecovery.com

Credit Card Payments – Third party vendors may charge a transaction fee for processing payments made by credit card; however, PRA does not charge or accept any fees. Please discuss this option with our staff if you have any questions.

QUALITY SERVICE SPECIALISTS AVAILABLE Mon. – Fri. 8 AM TO 5 PM (EST)

Not happy with the way you were treated? Our company strives to provide professional and courteous service to all our customers. Contact one of our staff to discuss issues related to our quality of service to you by phone at (866) 925-7109 or by e-mail at qualityservice@portfoliorecovery.com